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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2017-0446; FRL-9966-04-Region 8]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; Revisions to Regulation Number 3

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing approval of a portion of the State Implementation Plan (SIP) revisions submitted by the State of Colorado on February 25, 2015. The revisions are to Colorado Air Quality Control Commission (Commission) Regulation Number 3, Parts A, B and D. The amendments the EPA is proposing to act on include: Revisions to provisions for permitting emissions for particulate matter less than 2.5 micrograms (PM_{2.5}) in Part D, modifications to the provisions for filing revised Air Pollution Emission Notices (APEN) in Part A and updates to public notice publication requirements in Part B. This action is being taken under section 110 of the Clean Air Act (CAA).

DATES: Written comments must be received on or before **[Insert date 30 days after date of publication in the FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2015-0493 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from www.regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information

you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Kevin Leone, Air Program, U.S.

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SUPPLEMENTARY INFORMATION:

I. General Information

What should I consider as I prepare my comments for the EPA?

1. Submitting Confidential Business Information (CBI). Do not submit CBI to EPA through <http://www.regulations.gov> or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to the EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for preparing your comments. When submitting comments, remember to:
- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register volume, date and page number);
 - Follow directions and organize your comments;
 - Explain why you agree or disagree;
 - Suggest alternatives and substitute language for your requested changes;
 - Describe any assumptions and provide any technical information and or data that you used;
 - If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced;
 - Provide specific examples to illustrate your concerns, and suggest alternatives;
 - Explain your views as clearly as possible, avoiding the use of profanity or personal threats; and,
 - Make sure to submit your comments by the comment period deadline identified.

II. Background

Revisions to PM_{2.5} Significant Impact Level (SIL) and Significant Monitoring Concentration (SMC) Provisions

Colorado's SIP submittal revises the SIL and SMC provisions for PM_{2.5} in the State's Prevention of Significant Deterioration (PSD) permitting program. On January 22, 2013, the United States Court of Appeals for the District of Columbia Circuit vacated the SILs for PM_{2.5} and allowed the EPA to reconsider the provisions for SMCs. Sierra Club v. EPA, 705 F.3d 458

(D.C. Cir. 2013). On December 9, 2013, the EPA issued a final rule that removes the PM_{2.5} SIL from EPA's PSD regulations and revised the threshold for SMCs (78 FR 73698). The EPA set the PM_{2.5} SMC concentration at zero micrograms per cubic meter instead of removing PM_{2.5} entirely from the SMC provisions because a zero micrograms per cubic meter threshold means there is no air quality impact below which a reviewing authority has the discretion to exempt a source from the PM_{2.5} monitoring requirements, but that monitoring is still required. As a result of this court decision and the EPA's rulemaking, Colorado removed the SILs for PM_{2.5} from Part D, Section V.A.2.c set the SMC monitoring concentration to zero in Part D, Section VI.B.3.a(iii).

Revisions to APEN Reporting

Colorado's regulations in Part A, Section II.A. require:

“[N]o person shall allow emissions of air pollutants from, or construction, modification or alteration of, any facility, process, or activity which constitutes a stationary source, except residential structures, from which air pollutants are, or are to be, emitted unless and until an Air Pollution Emission Notice and the associated Air Pollution Emission Notice fee has been filed with the Division with respect to such emission.”

Colorado has revised its APEN reporting requirements to clarify when a revised APEN is required due to a significant change in annual actual emissions. The revision would clarify that the thresholds for determining significant changes are based on individual emission units, not facility-wide, actual emissions on a pollutant-by-pollutant basis. For example, an APEN reporting 150 tons per year (tpy) of carbon monoxide (CO) and 10 tpy of PM_{2.5} would need to update CO emissions using the “one hundred tpy or more” threshold in Part A, Section II.C.2.b.(iii), and update PM_{2.5} emissions using the “less than one hundred tpy” threshold in Part

A, Section II.C.2.b.(i). Without this proposed clarification (actual emissions on a pollutant-by-pollutant basis) a significant change was based on the source's aggregate annual actual emissions, which required sources to file revised APENs more often.

Colorado has also revised Part A, Section II.C.b(i) – (iii), Section II.C.4.a. and b. to clarify that APENs filed solely to update an expired APEN, change the owner or operator, or report a significant change in emissions need only report actual annual emissions (which is the equivalent of controlled emissions if the source utilizes emission control equipment). APENs filed to update control equipment or modify a permit limitation would continue to report both uncontrolled actual and controlled actual emissions. This revision simplifies and streamlines the requirements for filing revised APENs, because the source's actual annual emissions are the relevant information for inventory and fee purposes when reporting past years' emissions or reporting significant changes in annual actual emissions.

Revisions to Public Notice Requirements

Colorado has revised its provisions for public notice of a minor source permit application to update the publication requirements in Part B, Section III.C.4. Regulation 3 in the SIP requires the State to publish public notice of certain proposed minor source construction permit applications, including sources that apply for a permit to limit the potential to emit criteria pollutants, in a newspaper of general distribution in the area where the proposed project will be located or by other such method reasonably designed to ensure effective public notice. Recently, Colorado has found that some areas where construction permitting projects require public notice are proposed no longer have newspapers of general circulation. Therefore, in order to provide effective public notice, Colorado has revised its minor source public notice publication

requirements to include other means authorized by state statute and federal regulation that are designed to provide public notice of the applicable permitting action. Further, by utilizing other means of public notice such as the State website, Colorado will provide broader notice for a longer timeframe than a one-day publication in a newspaper.

III. What are the Changes that EPA is Proposing to Approve?

Under CAA section 110(l), EPA cannot approve a SIP revision that interferes with any requirement concerning attainment, reasonable further progress, or any other applicable requirement of the Act. The February 25, 2015 revisions to Regulation 3 Part D, Section VI.A.2.c and VI.B.3.a.(iii) of the Colorado SIP would not interfere with the applicable requirements of the Act. The revisions to the PSD program in Part D, Regulation 3 comply with the requirements of 40 CFR 51.166 as revised by the EPA in response to the D.C. Circuit Court of Appeals decision regarding PM_{2.5} SILs and SMCs. See 78 FR 73698. This proposal is limited to the revisions pertaining to PM_{2.5}; we are not proposing to re-approve any existing provisions in the Colorado SIP regarding source impact analysis and ambient monitoring. As the revisions removing PM_{2.5} SILs and SMCs are in accordance with the EPA's 2013 removal of PM_{2.5} SILs and SMCs from 40 CFR 51.166 and the revisions strengthen the SIP, we are proposing to approve the revisions. We are also proposing to approve the conforming change to the introductory statement in VI.A.2., which includes the deletion of the phrase at the end of the sentence (“, as clarified for any relevant air pollutant in Section VI.A.2.c.”). The revisions to Part A, Section II.C.b(i)–(iii), Section II.C.4.a. and b. comply with section 110(l) because the revisions are limited to the filing of revised APENs that are designed to update Colorado's emissions inventory or used to calculate emissions fees. The revisions to the public notice minor

source permitting requirements comply with section 110(l) because as discussed below, we propose to interpret that revisions are consistent with our regulations and guidance.

Colorado's February 25, 2015 submittal also revises its APEN requirements. The APEN revisions in Part A clarify that, for purposes of filing a revised APEN, the thresholds for determining significant changes are based on the emission unit's actual emissions on a pollutant-by-pollutant basis, not total facility-wide emissions. These revisions also clarify that APENs filed for the following purposes need only report actual emissions: solely to update an APEN before it expires; change in the owner or operator of any facility, process of activity; or report a significant change in emissions. APENs filed to update control equipment or modify a permit limitation would continue to report both uncontrolled actual and controlled actual emissions. The revisions to Part A, Section II.C.2.b(i)–(iii), Section II.C.4.a. and b streamline the requirements for filing revised APENs because the sources actual annual emissions is the relevant information for emissions inventory and fee purposes.

The CAA contains three programs governing construction of new and modified stationary sources, collectively referred to as new source review (NSR): minor NSR, PSD, and nonattainment NSR.¹ The revisions in the February 25, 2015 submittal to the public notice requirements in Regulation 3, Part B, Section III.C.4 apply only to the minor NSR program. They do not apply to the PSD and nonattainment NSR permit programs, which have separate public notice requirements in Regulation 3, Part D, Section IV.A.

Requirements for the minor NSR program are provided in 40 CFR sections 51.160 to

¹ For a detailed discussion of the three programs, please see (for example) 76 FR 38748 (July 1, 2011).

51.164. With respect to public notice of minor NSR approvals, the state must provide “a notice by prominent advertisement in the area affected.” 40 CFR 51.161(b)(3). On April 17, 2012, the EPA issued a guidance memorandum stating that we intended to interpret “prominent advertisement” in a media-neutral fashion.² The memorandum explained that states could meet the requirement by publication of the notice in appropriate newspaper, or could opt to publish the notice using other media so long as it would be reasonable to conclude that the public would have routine and ready access to the alternative publishing venue and the use of the alternative venue would be consistent with the state’s law or SIP.³

On October 18, 2016 (81 FR 71613) the EPA revised the public notice requirements for Clean Air Act permitting programs.⁴ In the 2016 final action, the EPA also revised the April 17, 2012 interpretation of “prominent advertisement” in 40 CFR 51.161(b)(3) for the minor NSR program by extending it to “synthetic minor” permits, that is, permits that contain legally and practically enforceable restrictions that result in the source not being subject to major NSR requirements. 81 FR 71617.

In this action, the EPA proposes to interpret “prominent advertisement” in similar fashion, that is, as media neutral and satisfied by any publishing venue to which it would be reasonable to conclude the public has routine and ready access. The February 25, 2015 SIP

² Memorandum from Janet McCabe, Principal Deputy Assistant Administrator, Office of Air and Radiation, to Regional Administrators, entitled “Minor New Source Review Program Public Notice Requirements under 40 C.F.R. 51.161(b)(3) (Apr. 17, 2012), available at <https://www.epa.gov/sites/production/files/2015-07/documents/pubnot.pdf>.

³ *Id.* at 1.

⁴ The EPA also revised requirements for posting approval documents for public inspection to allow for posting the documents at a physical location or on a public website identified by the state or local agency. 81 FR 71629. Colorado’s February 25, 2015 submittal retains (with a minor grammatical change) the currently approved method of posting the materials at the county clerk’s office for the county in which the source is or will be located.

revisions require the public notice to be published in either a newspaper of general distribution in the area in which the source is or will be located, or by other means necessary to assure notice to the affected public, including posting notice on the publicly accessible portion of the Division’s website. We propose to determine that this is adequate as “prominent advertisement.” We are not proposing to reassess Colorado’s minor NSR program with respect to public participation processes generally; we are only proposing to act on revisions that affect the publication of the notice specifically. This proposal is limited to the revisions as they apply to the SIP and criteria pollutants; we are not proposing action on provisions regarding “federal hazardous air pollutants” that are covered under authorities.

For the reasons expressed above, EPA is proposing to approve revisions to Regulation 3, Parts A, B and D and Appendix A from the February 25, 2015 submittal as shown in Table 1 below. Appendix A was revised as a conforming change to the APEN revisions. We are also proposing to approve the renumbering and formatting changes for the definition of “emission unit” in Regulation 3, Part D, I.A.13.a.; and II.A.13.a.(i) - (ii).

Table 1 - List of Colorado Revisions that EPA is Proposing to Approve

Revised Sections in February 10, 2015 Submission Proposed for Approval
Regulation Number 3, Part A: II.C.2.b.(i)-(iii); and II.C.4.a. and b.
Regulation Number 3, Part B: III.C.4.
Regulation Number 3, Part D: I.A.13.a.; II.A.13.a.(i) – (ii); VI.A.2.; VI.A.2.c.; and VI.B.3.a.(iii)
Appendix A

The EPA is not acting on revisions from Colorado's February 25, 2015 submittal related to greenhouse gas and carbon dioxide equivalent (CO₂e) revisions and the associated renumbering which was a result of Colorado's proposed greenhouse gas revisions in Parts A and D. These revisions will be acted on in a separate future rulemaking.

IV. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the Colorado Air Quality Control Commission (Commission) Regulation Number 3, Parts A, B and D discussed in section III of this preamble. The EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

V. Statutory and Executive Orders Review

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations (42 USC 7410(k), 40 CFR 52.02(a)). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves some state law as meeting federal requirements; this proposed action does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 USC 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 USC 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 USC 272 note) because application of those requirements would be inconsistent with the CAA; and,
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area

where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Greenhouse gases, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: July 26, 2017.

Debra H. Thomas,
Acting Regional Administrator,
Region 8.

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